

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FILED

JUL 19 1995

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

ROGER SCHLAFLY,

Plaintiff,

v.

PUBLIC KEY PARTNERS, and
RSA DATA SECURITY, INC.,

Defendants.

Case No.: C-94 20512 SW (PVT)

ORDER FOLLOWING AN
EVIDENTIARY HEARING

On June 6, 1995, defendants' motion for a protective order came on for hearing. This motion was continued to July 12, 1995, for a status conference and an evidentiary hearing consistent with Brown Bag Software v. Symantec Corp. 960 F.2d 1465 (9th Cir. 1992). Robert Schlafly appeared in pro se; Thomas R. Hogan represented Public Key Partners ("PKP"); Thomas E. Moore III represented RSA Data Security, Inc. ("RSA").

I. BACKGROUND

Plaintiff filed a complaint alleging invalidity of defendants' patents on cryptography technology and a violation

1 of anti-trust laws. Defendant PKP has counterclaimed, seeking
2 declaratory judgment that plaintiff has infringed their
3 patents.

4 Defendants argued that a protective order is necessary
5 because discovery in this action is likely to disclose highly
6 sensitive proprietary, trade secret information to the
7 plaintiff. Defendants' Protective Order provides a two-tiered
8 organization of confidential information. Plaintiff has
9 access to the "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY
10 COURT ORDER" tier, (Protective Order 6:11-13, 7:9-10), but is
11 excluded from the "CONFIDENTIAL -- ATTORNEY'S EYES ONLY" tier.
12 (Protective Order 8:6-10). However, plaintiff may retain an
13 "independent expert consultant" who would have access to
14 information designated "CONFIDENTIAL -- ATTORNEY'S EYES ONLY"
15 and be able to advise plaintiff accordingly. (Protective Order
16 8:6-10).

17 According to defendants, plaintiff is a direct competitor
18 because plaintiff develops similar software involving public
19 key cryptography, and sells the software to the same
20 customers. Therefore, defendants assert there is a strong
21 risk of inadvertent disclosure if plaintiff had access to
22 defendants' confidential information.

23 Ordinarily, an "ATTORNEY'S EYES ONLY" limitation in a
24 protective order would protect confidential information from
25 possible misuse by the opposing party, yet allow access to
26 opposing counsel for purposes of litigation. However,
27 plaintiff is appearing in pro se, so such a limitation could
28

1 essentially bar the plaintiff from seeing certain evidence at
2 all. Therefore, the Court must analyze whether this
3 protective order is warranted.
4

5 II. STANDARD OF REVIEW

6 A proper review of protective orders requires a factual
7 examination of all the risks and safeguards surrounding
8 inadvertent disclosure. The nature of the claims and of a
9 party's opportunity to develop its case through alternative
10 discovery procedures should be considered. The Court should
11 also consider the extreme sensitivity of the trade secrets at
12 issue and the potential damage to parties should the trade
13 secrets inadvertently become subject to misuse by the other
14 party. Brown Bag Software, 960 F.2d at 1470.
15

16 III. ANALYSIS

17 The issue is whether plaintiff should be restricted from
18 materials designated "CONFIDENTIAL -- ATTORNEY'S EYES ONLY"
19 under the Protective Order.

20 Mr. Schlafly's integrity, as an individual who signs and
21 agrees to be bound by a Protective Order, is not in question.
22 However, according to Brown Bag Software, 960 F.2d at 1470,
23 the Court must examine factually all the risks and safeguards
24 surrounding inadvertent disclosure of defendants' trade
25 secrets by plaintiff.

26 After inquiring into the specific factual circumstances
27 of plaintiff and defendants' conflicting interests, the Court
28

1 finds that Mr. Schlafly and defendants are direct competitors.
2 Plaintiff's access to defendants' confidential information
3 would necessarily entail the use of defendants' trade secrets
4 in the development of plaintiff's software, which poses a high
5 risk of inadvertent disclosure. Therefore, the Protective
6 Order may exclude Mr. Schlafly from documents designated as
7 "CONFIDENTIAL -- ATTORNEY'S EYES ONLY."

8 The Court advises Mr. Schlafly to seek legal counsel or
9 an independent expert consultant as provided in the Protective
10 Order. In this way, Mr. Schlafly is not completely barred
11 from seeing certain evidence and defendants' confidential
12 information is protected from inadvertent disclosure.

13 Further, defendants shall log all materials which are
14 designated as "CONFIDENTIAL -- ATTORNEY'S EYES ONLY." The
15 defendants are cautioned not to over designate material as
16 "ATTORNEY'S EYES ONLY."

17 18 IV. CONCLUSION


19 Good cause appearing therefore, IT IS HEREBY ORDERED that
20 defendants' motion for protective order is GRANTED.

21 Compliance with disclosures shall be completed by August
22 11, 1995. A motions hearing is scheduled for December 6, 1995
23 at 10:00 a.m. with Judge Williams. Defendants shall file
24 their opposition to plaintiff's motion and their own summary
25 judgment motions by October 6, 1995. Replies shall be
26 pursuant to local rules.

27 If Judge Williams does not set trial and pre-trial dates,
28

1 Magistrate Judge Trumbull shall be notified, within five days
2 after Judge Williams' decision on the summary judgment
3 motions, to set dates accordingly.
4

5 Dated: 7-18-95


6 PATRICIA V. TRUMBULL
7 United States Magistrate Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COPIES MAILED ON

7/19/95

TO:

Roger Schlafly
P.O. Box 1680
Soquel, California 95073

Thomas R. Hogan
LAW OFFICES OF THOMAS R. HOGAN
60 South Market Street, Suite 1125
San Jose, California 95113-2332

Thomas E. Moore III
TOMLINSON, ZISKO, MOROSOLI & MASER
200 Page Mill Road, Second Floor
Palo Alto, California 94306

Lorraine Quibodeaux
LORRAINE QUIBODEAUX
Deputy Clerk

National Archives Trust Fund

1000 Commodore Drive
San Bruno, CA 94066
(650) 238-3470

Civil Cases - Entire Case File		
FORM91A	1@	90.00 \$90.00
	100 ITEMS SUBTOTAL	\$90.00
	TOTAL	\$90.00
	Credit Card	\$90.00
	4000	
	Change Due	\$0.00



AFO-SB-INV001351

LOC: AFO-SB	WKS: AFO-SB_02
OPER: dsteiner	SLS: DSTEINER
DATE: 1/15/2014	TIME: 10:52:04 AM
CUSTOMER ACCOUNT: AFO-SB	

*Ready Access to
Essential Evidence*